



AGENDA DATE: 12/4/02
AGENDA ITEM: 4C

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)	
VERIZON NEW JERSEY, INC. FOR)	
AN ORDER FINDING THAT ITS)	<u>ORDER APPROVING</u>
PAYPHONE OPERATIONS ARE NOT)	<u>SETTLEMENT AGREEMENT</u>
SUBSIDIZED BY EXCHANGE OR)	
EXCHANGE ACCESS SERVICES)	BPU DOCKET NO. TO97100792

(SERVICE LIST ATTACHED)

BY THE BOARD:

On November 30, 1992, the New Jersey Payphone Association (NJPA) filed a petition with the Board of Public Utilities (Board) alleging that New Jersey Bell Telephone Company, now known as Verizon New Jersey, Inc. (VNJ), engaged in various practices that were contrary to the interests of the NJPA members. The following four petitions were filed by NJPA related to compliance by VNJ with either the New Jersey Telecommunications Act of 1992 or Section 276 of the Federal Telecommunications Act of 1996 (the Act). These Docket Nos. are: TO92121070, TT97010016, TT97050360 and TR97120890. These matters were resolved through a settlement between the NJPA and VNJ. On July 24, 2000, Administrative Law Judge Louis G. McAfoos III, issued a Partial Initial Decision and Settlement on the four petitions by Order dated October 24, 2000, the Board adopted the Partial Initial Decision as resolving the issues pending between the NJPA and VNJ.

The fifth petition, In the Matter of the Petition of Bell Atlantic-New Jersey, Inc. for an Order Finding that its Payphone Operations are not Subsidized by Exchange or Exchange Access Services, BPU Docket No. TO97100792, OAL Docket No. PUC 11269-97 remained open at the Office of Administrative Law (OAL). Hearings on this matter, known as the subsidy issue, commenced on July 22, 1999 and concluded on September 22, 1999. Testimony was filed by VNJ, AT&T Communications of New Jersey, Inc. (AT&T), the Ratepayer Advocate (RPA) and WorldCom. The record was closed on December 22, 1999. With the consent of all parties, an extended briefing schedule was agreed to and final briefs were not filed until the end of the year 2000.

On March 12, 2001, an Initial Decision on the matter was issued by Judge McAfoos and received at the Board on March 13, 2001. However, the Parties (VNJ, AT&T and MCI) continued to meet and entertain settlement discussions. Several extensions of the statutory review period were granted in order to accommodate the settlement discussions. After

extensive negotiations, the Parties agreed, on or about May 25, 2001, that they had achieved an agreement in principle.

On October 11, 2001, the Parties filed a Stipulation and Agreement with the Board for approval. The essence of the Agreement resulted in AT&T and WorldCom's withdrawal of their opposition to VNJ's petition in exchange for a one-time payment by VNJ to them. The RPA was not a Party to the Settlement Agreement and objected to the Agreement stating that the Agreement did not include all of the Parties and did not reflect a settlement of all matters and issues in dispute. The Board Staff reviewed all Parties' comments and advised the Board that the case be remanded to the OAL for further review and recommendation by an ALJ on the Post-Settlement Agreement. The case was sent back to the OAL and for a decision.

The Parties (VNJ, AT&T, WorldCom and the RPA) continued negotiations and by letter dated March 26, 2002, a new Stipulation and Agreement was filed by them with the Board. The new Agreement is a final settlement among all of the Parties and resolves all the remaining issues pending. On April 5, 2002, the Board retrieved the matter from the OAL to review the Agreement submitted by the Parties.

DISCUSSION

By letter dated March 26, 2002, after continued negotiations, the Parties (VNJ, AT&T, WorldCom and the RPA) filed a new Settlement and Agreement with the Board. It is a full settlement of all remaining issues, is consistent with the Telecommunications Act of 1996 and resolves the remaining issues contested in the proceeding. The terms and conditions are stated as follows:

The Parties agree that: a) the payphone service cost methodology developed by the FCC, proposed by the RPA and considered by Judge McAfoos, shall be utilized to measure whether payphone service is subsidized; b) the RPA and VNJ further stipulate that VNJ's payphone service is not subsidized, as of April 1997, after the terms, conditions, and rates set forth in the Stipulation and Agreement of Settlement by and between VNJ, RPA and NJPA were effective; c) AT&T and WorldCom, as part of this settlement, agree to withdraw their challenge to RPA's and VNJ's position that VNJ's payphone service is not subsidized and agree, consistent with all of the conditions of this Stipulation, not oppose a finding by the Board as to the positions stipulated by VNJ and the RPA; d) AT&T and WorldCom will withdraw, with prejudice, their opposition to VNJ's Petition, will not file exceptions to the recommended Initial Decision and will not oppose the relief sought in VNJ's Petition, including VNJ's claim that, as of April 1997, it has been entitled to receive per call compensation in New Jersey; e) AT&T will withdraw, with prejudice, the AT&T Petition; f) within fourteen days of the Board's approval of the Stipulation of Settlement, VNJ will make a one-time payment to AT&T and WorldCom. This settlement payment is to be marked and treated as Confidential and Proprietary as indicated in the Agreement; and g) VNJ, AT&T and WorldCom recognize and agree that settlement of all outstanding issues by and among them in this proceeding is contingent on the satisfaction of all conditions set forth in this Stipulation of Settlement.

The Parties agreed that a copy of all documents shall be retained by Staff to constitute the official record of this matter, but requested that such record shall be marked and preserved in accordance with the Confidentiality Stipulation, which was attached to and incorporated by reference into the Stipulation of Settlement. The Parties also agreed that a redacted version of the Stipulation of Settlement shall be made available to the public. However, by letter dated November 15, 2002, the parties have revised their request for confidentiality of the financial

terms of the Settlement which appear on Page 6 of the Agreement, and have asked that the financial terms of the Settlement be marked “in a manner consistent with the Board’s proposed rules N.J.A.C. 14:1-12.1 et seq.” and that “any determination regarding the confidentiality of the Agreement be withheld pending a formal request and notice to the Parties.” The Parties further request that “in the event that a non-party request access to the information, the Parties be advised by formal notice so that they have an opportunity to oppose the disclosure of the information.”

BOARD'S FINDINGS AND CONCLUSION

Based on the review of the record and FINDING that the latest Stipulation and Agreement submitted to the Board by the Parties – AT&T, VNJ, WorldCom and the RPA – is the result of an amicable resolution by all, and that it disposes of all issues pending and also FINDING that the Agreement is in accordance with law, the Board HEREBY ADOPTS the attached Stipulation and Agreement. The Board ORDERS the Parties to fully comply with the terms of the Agreement and finally, the Board DIRECTS the custodian of record to provide Petitioners' with an opportunity to mark the Settlement and Agreement previously submitted to the Board by the Parties in a manner consistent with the procedures set forth in the Board's proposed rules, N.J.A.C. 14:1-12.1 et seq. so as to indicate Petitioners' continuing claim as to confidentiality of the financial terms of settlement. It is further DIRECTED that any determination regarding the merits of Petitioners' claim as to the confidentiality of such terms be withheld until such time as a formal request from a non-party to review such terms is received by the custodian of record and appropriate notice of such request is given to the Parties herein.

DATED: 12/5/02

BOARD OF PUBLIC UTILITIES
BY:

(signed)
JEANNE M. FOX
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

(signed)
CONNIE O. HUGHES
COMMISSIONER

(signed)
JACK ALTER
COMMISSIONER

ATTEST:

(signed)
KRISTI IZZO
SECRETARY